



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,789	10/27/2003	Thomas L. Toth	GEMS8081.193	2788
27061	7590	11/25/2005		
ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (GEMS) 14135 NORTH CEDARBURG ROAD MEQUON, WI 53097				
			EXAMINER KAO, CHIH CHENG G	
			ART UNIT 2882	PAPER NUMBER

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/605,789

Applicant(s)

TOTH ET AL.

Examiner

Chih-Cheng Glen Kao

Art Unit

2882

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

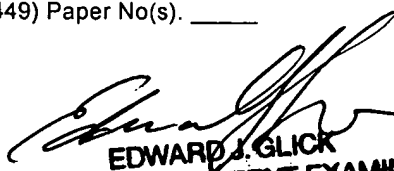
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,5,6,8-14 and 16-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


EDWARD J. GLICK
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Regarding claims 1 and 11 at least, in response to Applicants' argument that there is no suggestion to modify the reference, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, the knowledge is generally available to one of ordinary skill in the art. As stated before, positioning the tail of the second filter at a distal end of the second moveable filter relative to the x-ray source is an obvious modification, since rearranging parts of an invention involves only routine skill in the art, which is knowledge generally known to one of ordinary skill in the art. Furthermore, one would be motivated to make such a modification to create more area for placing sensors and to reduce components holding sensors (fig. 3a) as implied from Moore. Having more area for placing sensors will create a more stable platform for the sensors (figs. 3a and 3b) and will provide a more structurally sound system. Again, this is knowledge generally known to one of ordinary skill in the art. Since these modifications are obvious to one of ordinary skill in the art, the claims of the current application are rejected as being obvious modifications of the prior art.

Furthermore, the Examiner notes that the original specification does not provide any support for any problem that may be solved for having the tails of the filters at a distal end of the filters relative to the x-ray source. It appears that the filters work equally well in either distal or proximal orientations as suggested by the original specification (figs. 5 and 6). Although, Applicants appear to point out the criticality of having a tail of a filter at a distal end of the filter relative to the x-ray source, the argument has not been given any weight. There is no evidence supporting such a position. The original specification does not provide any support for such a position. There isn't even the mention of scattered X-rays in the original specification. In addition, the alleged advantages do not appear to be enabled. How can a detector receive a greater amount of unattenuated scatter from a surface of the filter? If scatter is coming from a surface of the filter, is it not attenuated? Furthermore, how can the claimed structure reduce filter scatter? How can scattering be reduced by a filter that does not control the direction of the x-rays, but only the attenuation or intensity level of the scattered X-rays? Since Applicants have not provided support in the original specification, evidence, and since the alleged advantages do not appear to be enabled, Applicants' arguments have not been given any weight.

Regarding at least claim 17, Applicants argue that Moore teaches away from the combination. The Examiner disagrees. Moore was included in the combination for its teaching of motors for filters. These motors would work equally well with a system having a pair of moveable filters as well as a stationary filter. Such a modification for including motors would have been obvious, and does not teach away from the combination. Therefore, the combination is still considered obvious, and the claims remain rejected.

In conclusion, Applicants' arguments are not persuasive, and the claims remain rejected.